



Bail Slip

A.V.K.Arulkrushnan, S/o.N.Kadiarajan, male, aged about 50/2015 (Sole Accused) is released on bail vide Court order dated 18.09.2015 made in MP(MD).No.1 of 2015 in CRL RC(MD).No.437 of 2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: **21.10.2019**

Pronounced on: **08.11.2019**

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Crl.R.C. (MD) No.437 of 2015

A.V.K.Arulkrushnan ... Revision Petitioner/Appellant/Accused

Vs.

B.K.Chellappan ...Respondent/Respondent/Complainant

PRAYER: Criminal Revision Case is filed under Sections 397 & 407 of the Criminal Procedure Code against the judgment dated 21.08.2015 passed by the II Additional District Judge, Tiruchirappalli in C.A.No.129 of 2014 confirming the judgment dated 13.08.2014 passed by the Principal District Munsif and Judicial Magistrate, Lalgudi in C.C.No.44 of 2008.

For Petitioner : Mr.T.Mohan
for Mr.T.Lenin Kumar
For Respondent : Mr.M.Siddharthan

O R D E R

The present revision is filed against the judgment of the lower Appellate Court dated 21.08.2015 in C.A.No.129 of 2014 confirming the judgment of the trial court in C.C.No. 44 of 2008 dated 13.08.2014 in and by which the petitioner/accused was convicted for offences under Sections 467 and 471 IPC. He was sentenced to undergo 6 months rigorous imprisonment and to pay a fine of Rs.1000/- in default of payment of fine, to undergo 1 month rigorous imprisonment for each of the offence.

2. According to the revision petitioner, both the trial court and the lower Appellate Court have committed grave error in convicting the petitioner, when there was absolutely no evidence to connect the petitioner to any act of forgery in respect of the sale executed by one Maniammal which was marked as Ex.P.1. The said Maniammal is the grand mother of the petitioner herein.



3. The learned counsel appearing for the revision petitioner would strenuously contend that in order to make out a case for conviction under Sections 467 and 471 IPC, there must be unimpeachable evidence to demonstrate that the petitioner has committed the act of forgery. In this case, according to the learned counsel for the petitioner, the trial court only on presumption has drawn inference that it was only the petitioner, who could have corrected the survey numbers in the Will executed by his grand mother, Maniammal since a copy of the Will was available only with the petitioner after the death of the testator.

4. Moreover, the trial court has also drawn presumption against the petitioner that the correction of survey numbers in the original Will of the testator Maniammal, the petitioner could only have been the beneficiary of the said correction and therefore, there could not be any other person, who would be interested in making correction in the survey number in the Will.

5. According to the learned counsel for the petitioner, such presumption is not permissible in criminal law for the simple reason that the act of forgery being a serious allegation, there must be some direct evidence to show that the petitioner was indeed responsible for the correction of survey numbers.

6. In fact, he would draw the attention of this Court to the observation made by the trial court in its judgment which observed that the evidence of the complainant-P.W.1 himself did not point to the involvement of the petitioner in the so-called correction of survey numbers and yet, the trial court has held that even in the absence of direct evidence, still it was not possible to hold that the petitioner did not make the correction in the survey numbers. Therefore, such presumption despite the absence of any evidence is patently erroneous and in fact, the trial court arrived its conclusion only on such presumption and assumption.

7. The learned counsel would also draw attention of this Court to the fact that the survey number is S.No.156/8C with patta No.672, was under the tenancy of the petitioner's grand mother till her death. Thereafter, it was bought in outright sale by the petitioner from its original vendor. According to the learned counsel, once controversial survey number belong to the land and which was purchased by the petitioner himself in the year 2006, the question of deriving any benefit through correction made in the survey number would not arise at all.

8. The learned counsel also submits that before the trial court 3 witnesses were examined on the side of the prosecution. P.W.1 is the complainant and P.W.2 and P.W.3 were the Sub Registrars, who acted as Sub Registrar during the respective times in the office in which the Will was presented and registered in the year 1993 by the



petitioner's grand mother Maniammal.

9. The learned counsel would draw the attention of this Court to a particular statement of P.W.2, who has clearly deposed that after registration of the sale, it was the testator namely, Maniammal, who has taken the Will and therefore, the same was not with the petitioner originally. According to him, no piece of evidence has been let in to even indirectly allege that the petitioner was the person, who was involved in the correction of survey number.

10. The trial court has held that whitener was applied to the original survey number and it was not denied by the petitioner. However, the trial court has failed to note that even in the complaint filed by the complainant, the application of whitener to the survey number was not mentioned at all and therefore, the question of denying the application of whitener did not arise in the first place. However, the trial court has erred completely by drawing an inference against the petitioner in regard to application of whitener in the survey number when that was not the case of the complainant himself.

11. The lower Appellate Court has simply accepted the trial court's view in the said aspect and concluded that such correction by whitener was never denied by the petitioner and instead his case was that he was not aware of the correction. According to the lower Appellate Court, since it was admitted that the Will was with the petitioner, there was no chance for any other person to have made any correction in the survey numbers.

12. The learned counsel also submit that according to the trial court as well as the lower Appellate court that by misusing corrected survey numbers the petitioner had filed O.S.No.312 of 2007 to obtain a decree for permanent injunction and pending disposal of the suit, the petitioner had managed to obtain interim injunction in I.A.No.738 of 2007 against the complainant. According to the trial court as well as the lower Appellate Court, the corrected survey number was misused by the petitioner in order to appropriate the property in respect of the said survey number as against the claim of the complainant.

13. The learned counsel would further submit that the trial court as well as the lower Appellate court have needlessly and unnecessarily drawn presumption against the petitioner in the absence of any evidence at all much less any evidence corroborating any act of forgery attributable to the petitioner. In fact, the learned counsel would draw attention of this Court to the evidence of P.W.3 relating to the Sub Registrar Office in which the Will was registered on 3.6.1994 and the petitioner has applied for change of entry in the revenue records in his name in respect of the survey number on the basis of the sale deed executed in his favour.



The learned counsel also submit that this crucial aspect was overlooked by the trial court as well as by the lower Appellate Court. The learned counsel finally would submit that as per the observation of the Hon'ble Supreme Court of India in a decision in **Chatt Ram Vs. State of Haryana** reported in **1980 SCC (Crl) 243** in order to prove the act of forgery proof of factual ingredient was essential.

14. The learned counsel draw attention of this Court to the observation in paragraph No.14 of the said judgment which is extracted hereunder:

"14. There were two crucial questions which had to be considered before the appellant Chatt Ram could be convicted of the offences with which he was charged. With regard to the charge under Section 467, Indian Penal Code, it was to be determined whether Chatt Ram had participated in any manner in the act of forging the ticket (Ex.P 3). Similarly regarding the offence under Section 471, India Penal Code, it was necessary to consider whether the prosecution had established by adducing cogent and convincing evidence that Chatt Ram, appellant knew or had reason to believe the ticket (Ex.P.3) to be a forged document when he presented it before the Treasury Officer and later before the Director to claim special prize on the basis thereof. Proof of this factual ingredient was essential for conviction of the appellant for an offence under Section 471, Penal Code. The High Court does not appear to have concentrated on these crucial issues of fact''.

15. According to the learned counsel, in this case, there is absolutely no proof let in on behalf of the prosecution that the petitioner alone was responsible for making the correction and the entire basis of conclusion was only with reference to the fact that the copy of the Will was in the custody of the petitioner and he alone could have done the act of forgery and no one else. Such presumption is untenable in the criminal jurisprudence and on such preponderance of probabilities the petitioner could not be convicted at all. Such a general and vague presumption to convict the person is alien in criminal law and, he requested this Court to interfere with the order of the courts below.

16. Per contra, the learned counsel appearing on behalf of the respondent/complainant would submit that the trial court as well as the lower Appellate Court has correctly convicted the petitioner under Sections 467 and 471 IPC since the presumption drawn by the trial court was on the basis of sufficient reasoning that the Will was all along in the custody of the petitioner and since that was the admitted position there could not have been any other person who could be interested in correcting the survey numbers, except the



17. According to the learned counsel for the respondent/complainant, the petitioner having purchased the said land in respect of the controversial survey numbers, they are the beneficiary of the Will and in order to consolidate his claim in respect of the property, he alone would have made the corrections. If the complainant was not the beneficiary of the corrected survey numbers he ought to have taken steps in accordance with law. Therefore, presumption and assumption drawn by the trial court as confirmed by the lower appellate court is perfectly in order. According to the learned counsel for the respondent/complainant, in such acts of forgery there cannot be any direct evidence at all and no act of forgery could be done in open with eye witnesses present.

18. It is further submitted that the only point for consideration is as to whether reasonable inference could be drawn in order to connect the accused with the act of forgery and in this case, presumption and inference drawn against the petitioner was well founded on the basis of cumulative facts put together and the finding of fact did not suffer from any perversity and therefore, the ultimate conviction by the trial court is confirmed by the lower appellate court does not call for any interference. Therefore, he would submit that the present revision lacks on merits and the same is liable to be dismissed.

19. I have considered the submissions made by the rival parties and perused the materials and pleadings placed on record.

20. No doubt, as rightly contended by the learned counsel for the respondent/complainant that to bring any act of forgery within the ambit of Sections 467 and 471 of IPC, it was always not possible to find direct evidence and the court can make presumption and could draw inference on the basis of cumulative facts presented before it, yet being the revisional court this Court has to satisfy itself about the sound basis on which such presumption was made and inferences were drawn against the petitioner. In this case, admittedly, even according to the complainant, it was in fact observed by the trial court that there was no intention as to how the petitioner had done such act of forgery. Yet the trial court has drawn presumption against the petitioner that he alone could have done the mischief of correcting the survey numbers since the custody of the Will was only with the petitioner. This Court is unable to see as to how such presumption was possible to be drawn against the petitioner when there was doubt regarding custody of the Will with the petitioner all along. In fact it appeared that the petitioner has stated that the Will was handed over to him by the complainant himself and in fact the complainant himself has a doubt about who had done the correction in the survey numbers in the Will. Once the complainant has doubt about who had made the corrections in the survey numbers, the trial court was not correct in drawing unnecessary presumption against the petitioner on the basis of its



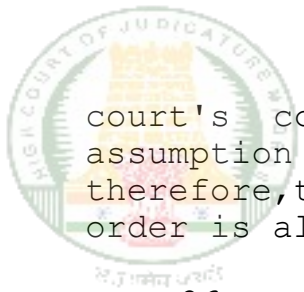
21. As rightly contended by the learned counsel for the petitioner the chain of custody right from the day of patta and till the date when the date of correction was noticed has to be established. The chain ought to be unbroken. In this case no such continuous possession of the Will was established at the hands of the petitioner in order to point out that it was the petitioner alone who could be responsible for making such correction.

22. In this case, this Court cannot lose sight of the fact that the act of forgery could always be possible wherein the accused himself would be the only person to get the benefit and that no other person could have possibly done it in the surrounding circumstances so as to enable the court below to draw an unequivocal presumption. This Court is of the considered view that no sufficient circumstance exists to point the guilt of the petitioner in regard to offence under Sections 467 and 471 IPC.

23. Moreover, it was also the fact that the controversial land in the survey number was purchased by the petitioner himself and thereafter, the revenue record was mutated in his favour and the question of benefiting from the Will did not arise at all. Originally, it was the admitted case that the correct survey number was in respect of the land which was leased out to the petitioner's grand mother and the lease hold right had been subsequently transformed by way of an outright sale of the property in favour of the petitioner. Therefore, it cannot be gainsaid that the petitioner was the beneficiary of such correction. Once the sale was effected by the original vendor of the property in favour of the petitioner, the Will and the corrected survey numbers will lose its relevance. But in respect of the so-called corrections made in the survey numbers the trial court as well as the Appellate Court did not refer to the evidence of P.W.2 and P.W.3 and also to the defence raised on behalf of the revision petitioner.

24. It appears that the trial court as well as the Appellate Court were completely guided by only piece of presumption that the petitioner alone could have been the person who had made the correction in the survey number as the custody of the Will was only with the petitioner all along. Such general presumption as contended by the learned counsel for the petitioner is impermissible in criminal jurisprudence as held by the Hon'ble Supreme Court of India in the aforementioned decision.

25. The trial court cannot convict a person on the basis of its own presumption and assumption unless there is a clinching materials to convict the person for the offence charged against him. In this case, there appears to be no evidence at all to make out the offence under Sections 467 and 471 IPC and therefore, the conviction held out by the courts below is liable to be set aside. Unfortunately, the Appellate Court had mechanically confirmed the trial



court's conviction on the basis of the same presumption and assumption without properly appreciating the grounds of appeal and therefore, the appellate court's order confirming the trial court's order is also liable to be set aside.

26. For the above reasons, this Court finds that the order of the trial court convicting the petitioner under Sections 467 and 471 IPC cannot be countenanced on facts and law and the appellate court did not apply its mind independently and has gone by the same presumption and assumption. The order dated 21.08.2015 passed by the II Additional District Judge, Tiruchirappalli in C.A.No.129 of 2014 confirming the judgment dated 13.08.2014 passed by the Principal District Munsif and Judicial Magistrate, Lalgudi in C.C.No.44 of 2008 is set aside. the revision petitioner is acquitted from all charges.

27. In the result, this Criminal Revision is allowed.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

CM

To

1. The II Additional District Judge, Tiruchirappalli
2. The Principal District Munsif and Judicial Magistrate, Lalgudi
3. The Chief Judicial Magistrate, Lalkudi.
4. The Judicial Magistrate, Lalkudi.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

COPY TO

The Record Keeper,
V.R.Section, Madurai Bench of Madras High Court,
Madurai. (2 copies)

+3CC TO MR.T.LENIN KUMAR, Advocate Sr. No. 96963 & 97378

Cr1.R.C. (MD) No.437 of 2015

08.11.2019

NS (CO)

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